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BOOK REVIEWS

The Prize Code of the German Empire. By Charles Henry Huberich and Richard King. New York: Baker, Voorhis & Co. 1915. pp. xxiii, 177. \$2.50.

Das Englische Prisenrecht in seiner neuesten Gestalt. By Charles Henry Huberich. Berlin: Carl Heymanns Verlag. 1915. pp. xv, 135. 5 marks.

It seems appropriate to review these books together because of their common authorship, their similarity of arrangement, and the leading rôles which the two nations named have played over against each other in maritime warfare during the past year.

In the first book, the authors present the original text and an accurate English translation without comment of the German Prize Code of September 30, 1909, incorporating the amendments thereof down to July 1, 1915. The introduction gives a concise sketch of the historical development of German prize law. We note that the authors make no mention of the first prize ordinance enacted under the authority of the Prize Law of May 3, 1884, namely, the imperial ordinance of February 15, 1889, which related to the blockade of the East African coast for the suppression of the slave trade and provided courts for the condemnation of prizes captured during this blockade conformably with the Brussels Acts. Though the Emperor, in this ordinance, in terms refers to section 2 of the Prize Law of May 3, 1884, as the source of his authority, the reference seems inapt for the reason that section 1 of the law demonstrates that it relates to "a capture in war," which designation could be applied to a slave-ship only by forced analogy. It is an interesting fact that this law of May 3, 1884, confers upon the Emperor merely the authority to decree "the place of sitting and the composition of prize courts, and the procedure in cases brought before them"—in a word, the adjective but not the substantive law of prize. The Imperial Prize Courts Ordinance of April 15, 1911, is undoubtedly authorized by this law, but not so the Prize Code of September 30, 1909. The latter, which is an imperial ordinance, became effective as law only after

its promulgation on August 3, 1914. It is clear, therefore, that the exercise of prize jurisdiction in Germany is viewed as a military action, which is to be performed in such manner as the Commander-in-Chief shall decree. What a contrast to the American system in which Congress has the sole power "to make rules concerning captures on land and water," and the judiciary—the feeblest arm in the state—claims the authority to restrain the Commander-in-Chief even during war!

This is not the place to examine particularly the provisions of the German Prize Code, which follows substantially the Declaration of London. On page 50 of the author's translation we find this article which contains an important innovation:

Art. 82. If a commander desires to stop a vessel he shall command the vessel to stop by means of signals and blowing of the siren. * * * During a pursuit the war ensign need not be displayed, and the use of any merchant flag (einer beliebigen Handelsflagge) is permitted.

A German warship in pursuit of its prey may fly the American flag. It is hardly likely that the ruse would delude anybody, just as it would be futile for the fleeing ship to display false colors, for it would be stopped and searched in any event. But this promiscuous use of neutral nations' ensigns ought to be more clearly and emphatically prohibited. A nation's flag, like an individual's name, is distinctive property. Neither is to be used without authority to deceive and injure unsuspecting friends or strangers. Such an abuse reacts on the individual or nation tolerating it.

In *Das Englische Prisenrecht*, Dr. Huberich, who is an American by birth and education, offers the Germans the counterpart of the book just discussed. This work, however, is no mere translation but a systematic exposition of the British law of prize, the order of topics following the arrangement of the German *Prisenordnung*. Special attention is given to British legislation and the decisions of the British prize courts since August, 1914. The authorities are brought down to April, 1915, which is far in advance of the official publications of many of the records. Necessarily many citations are to newspaper reports, notably of the decisions of the colonial prize courts in Australia, India, South Africa, and Egypt. Only a practitioner and specialist could have gathered such a mass of recent information from such widely scattered sources. Perhaps really too much attention is given to the current decisions of courts of first instance (especially the vice admiralty courts) as authoritative

statements of British prize law; and the very up-to-dateness of the book may limit its permanent value.

Dr. Huberich expresses the opinion that the recognition given the Hague conventions and the partial adoption of the Declaration of London have transformed English prize law to such an extent into a definite code that important changes, such as followed the Napoleonic wars and the Crimean war, are hardly to be expected. The grave controversies which Great Britain is now having with neutral states certainly evidence some striking deviations from the Hague conventions and the Declaration of London. The innovations which Great Britain is now practicing will certainly constitute most important changes if they are acquiesced in and accepted as international law, e. g., the Order in Council of March 11, 1915. The extension given the conception of a legal blockade, the assumption that one belligerent can dictate to all other nations what is or is not contraband, the future of the Suez Canal, the status of armed merchantmen, are some of the critical issues of the present naval war that are pregnant with possibilities of radical changes in the law of maritime warfare. None of these issues are mentioned by the author, who assures his German readers that he is presenting "the rules of prize law as they are actually administered in the British courts, without any reference whatever to their political bearing." Dr. Huberich simply registers the official acts of the British and lets the reader pass judgment. This impartial and objective method ought to recommend the book even to English readers. No English book, to the reviewer's knowledge, has been published giving so compact and systematic a statement of contemporary British prize law.

GEORGE C. BUTTE.

Government of the Panama Canal Zone. By Major General George W. Goethals, U. S. Army, Governor of the Panama Canal. The Stafford Little Lectures. Princeton: University Press, 1915. pp. 106. Cloth \$1.00.

To the growing literature about the Panama Canal has just been added this little volume, discussing one phase only of the remarkable work on the Isthmus—the government under which the construction was prosecuted, and that under which the Canal is to be operated. The name of its distinguished author gives the stamp of authority to his treatment of the subject, which is one of much more than popular and ephemeral interest. Starting with the Spooner Act of June 28, 1902,